

ADOPTED BY THE BOARD TO REVIEW CLAIMS
March 9, 2006

Resolution #2006-003

AUTHORITY: NRS 590.830

**PROPOSED REGULATION OF THE
DIVISION OF ENVIRONMENTAL
PROTECTION OF THE STATE DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES**

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, 7 and 9, NRS 590.830; §5, NRS 590.830 and 590.850; §§6 and 8, NRS 590.830 and 590.870.

A REGULATION relating to petroleum storage tanks; interpreting the term "marina storage tank"; incorporating by reference certain provisions of the Code of Federal Regulations and certain provisions of the International Fire Code; revising provisions relating to the inspection of petroleum storage tanks; providing for a 3 year limitation on the time period during which certain cleanup costs may be recovered from the Fund for Cleaning Up Discharges of Petroleum; and providing other matters properly relating thereto.

Section 1. NAC 590.700 is hereby amended to read as follows:

590.700 As used in NAC 590.700 to 590.790, inclusive, unless the context otherwise requires:

1. "Board" means the Board to Review Claims.
2. "Division" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.
3. "Fund" means the Fund for Cleaning Up Discharges of Petroleum.
4. "Portable storage tank" means a storage tank with a capacity of 60 gallons or more that is used above the ground and may be moved without disassembly of the tank to more than one location for the temporary storage of petroleum.

5. “Registered storage tank” means a storage tank operated by a person who is required to or who elects to register it ~~[-]~~ *for coverage provided by the Fund.*

6. “Storage tank” has the meaning ascribed to it in NAC 590.710.

Sec. 2. NAC 590.710 is hereby amended to read as follows:
590.710 1. For the purposes of NRS 590.700 to 590.920, inclusive, the Board

interprets:

(a) “Costs for cleaning up” to mean any expense of corrective action necessitated by a discharge from a storage tank. The term does not include:

- (1) The expense of any bond posted to release a writ of attachment;
- (2) Any expense incurred by an operator to investigate or defend any claim or suit, except any such expense incurred at the request of the Board;
- (3) Any expense taxed against the operator as costs of suit in a suit or administrative proceeding;
- (4) Any award of prejudgment interest, except for interest awarded on that part of the judgment paid by the Fund;
- (5) Any expense of repairing, replacing or upgrading any storage tank or its contents;
- (6) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank; and
- (7) Any loss of income or revenue of the business of an operator that is incurred by an operator during a corrective action necessitated by a discharge.

(b) “Damages” to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the State or the operator caused by a discharge. The term does not include:

- (1) Any expense excluded from the definition contained in paragraph (a);
- (2) Any obligation of the operator imposed pursuant to any statute providing benefits for workers’ compensation, disability or unemployment compensation;
- (3) Any bodily injury to an employee of the operator, or the spouse, parent, brother or sister of the employee, arising out of and in the course of the employee’s employment by the operator. This exclusion applies whether the operator may be liable as an employer or in any other capacity, and to any obligation to share damages with or reimburse another person who must pay damages because of the injury;
- (4) Any obligation of the operator imposed by a contractual assumption of liability; or
- (5) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank.

(c) “Emergency action” to mean any action that:

- (1) Stops the release of petroleum;
- (2) Identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release; or
- (3) Prevents the migration of petroleum which poses a substantial imminent threat to the environment.

(d) *“Marina storage tank” to mean a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and*

which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.

(e) “Site” to mean the facility, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located.

~~[(e)]~~ (f) “Small business” to mean a business which receives less than \$500,000 in gross annual receipts from the site where the tank is located, based upon the average annual gross receipts for the following period:

(1) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(2) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

~~[(f)]~~ (g) “Storage tank” to mean any tank, including any connected pipes, *except piping above the dispenser shear valve*, used to contain an accumulation of petroleum. The term does not include any tank that is:

(1) Exempted from the provisions of NRS 590.700 to 590.920, inclusive, unless the operator of the tank chooses to register it pursuant to paragraph (b) of subsection 1 of NRS 590.920;

(2) Excluded from the definition of “underground storage tank” in 40 C.F.R. § 280.12, except that a farm or residential tank having a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes is a storage tank;

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71; or

(4) Not federally regulated which is permanently closed in accordance with a rule or an ordinance of a local governmental entity.

2. As used in this section:

(a) “Bodily injury” means any injury, sickness, disease or death suffered by a person as a proximate result of a discharge.

(b) “Property damage” means any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge.

(c) “Suit” means any civil proceeding in which damages are sought for which the Fund is potentially liable. The term includes any arbitration proceeding in which such damages are sought, to which the operator must submit or to which he submits with the consent of the Board.

Sec. 3. NAC 590.714 is hereby amended to read as follows:
590.714 To be designated as a small business as described in paragraph ~~(e)~~ (f) of subsection 1 of NAC 590.710, an operator must submit the following to the Division:

1. Copies of forms reporting federal income tax which show the operator’s gross annual receipts for the following period:

(a) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(b) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

2. Any other information requested by the Division which is necessary to determine whether the operator is a small business.

Sec. 4. NAC 590.720 is hereby amended to read as follows:
590.720 The Board hereby adopts by reference ~~the~~:

1. The provisions of 40 C.F.R. §§ 280.12, 280.40 to 280.45, inclusive, 280.50, 280.53, 280.70 and 280.71 as they existed on July 1, 1990 ~~[-]~~, and the provisions of 40 C.F.R. §§ 280.61 and 280.62 as they existed on January 1, 2006. A copy of the volume containing these provisions may be obtained at a cost of ~~[\$22]~~ \$50 from the Superintendent of Documents, United States Government Printing Office, Washington, DC ~~[20402.]~~ 20401.

2. The provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 Edition. A copy of the volume containing these provisions may be obtained at the cost of \$70 from the International Code Council at the Internet address <<http://www.iccsafe.org>>.

Sec. 5. NAC 590.730 is hereby amended to read as follows:
590.730 1. Except as otherwise provided in this subsection, each operator of a registered storage tank shall, on or before October 1 of each year, pay a fee ~~for registration~~ in the amount of \$100 *for registration for coverage provided by the Fund* and submit an application for registration to the Division in the form prescribed by the Board. An application for registration is not required from an operator who has filed with the Division Form 7530-1, "Notification for Underground Storage Tanks," adopted by the United States Environmental Protection Agency.

2. The Division will bill the operator for the annual registration fee not less than 30 days before the date the fee is due. The failure of an operator to receive a bill does not relieve him of his obligation to pay the fee on or before the date it is due.

3. Upon compliance by the operator with the provisions of subsection 1, the Division will issue a letter evidencing the coverage provided by NRS 590.880 or 590.890, whichever applies. The letter will:

(a) Include the name and address of the facility at which the storage tank is located, together with any other information required to identify the storage tank; and

(b) Set forth the amount of money available in the Fund, as of the date of the letter, to pay costs or damages resulting from any discharge from the storage tank ~~[-]~~ *which qualifies for coverage provided by NRS 590.880 or 590.890, as applicable.*

4. After January 1, 1992, if a discharge from a storage tank is discovered during a period in which the annual registration fee for that storage tank is delinquent, the Division will not use money in the Fund to pay costs or damages resulting from any discharge from that storage tank.

Sec. 6. NAC 590.740 is hereby amended to read as follows:

590.740 1. Except as otherwise provided in this section, each operator of a registered storage tank shall perform or cause to be performed a test of the storage tank for tightness in accordance with the provisions of NAC 459.994 and the schedule contained in 40 C.F.R. § 280.40(c).

2. ~~[-]~~ *The operator of a* registered storage tank that is above ground ~~[-]~~ *must be inspected visually by the operator]* *shall perform or cause to be performed an inspection of the storage tank* at least ~~[-]~~ *twice each year.] once each month. The monthly inspection must include, without limitation:*

(a) *Visual inspection of the aboveground storage tank system to identify cracks or other defects in the secondary containment area and product transfer area;*

(b) Visual inspection of the exterior surfaces of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies and to identify malfunctioning equipment, needed maintenance and needed revisions to current operating practices;

(c) Visual inspection of the elevated tanks or tanks on concrete slabs; and

(d) Unless the secondary containment of the tank has a sound concrete floor or liner:

(1) Visual inspection of the area between the outer shell of the tank or the floor of the tank and the containment area; or

(2) Vapor monitoring of the soil directly beneath the tank bottom or perimeter and the water table.

3. A *registered* portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated.

4. *A marina storage tank must be tested and inspected in accordance with the provisions of section 11 of LCB File No. R083-05, which was adopted by the State Environmental Commission and which was filed with the Secretary of State on October 31, 2005.*

5. The operator of a registered storage tank ~~for a portable storage tank~~ shall maintain a record of each ~~such~~ inspection *conducted pursuant to this section* on a form approved by the Division ~~for~~ *for at least 3 years after the date of the inspection.*

Sec. 7. NAC 590.750 is hereby amended to read as follows:
590.750 Upon request, an operator of a ~~registered~~ *regulated underground* storage tank shall submit to the Division evidence of his financial responsibility. An operator may demonstrate his financial responsibility in any manner permitted by NAC 459.995.

Sec. 8. NAC 590.760 is hereby amended to read as follows:
590.760 1. The operator of a storage tank shall report any discharge promptly in

accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.

2. As soon as possible after the discharge, the operator shall submit to the Division an application for coverage by the Fund for the discharge. The application for coverage must be submitted on the form prescribed by the Division and must include:

(a) A written description of how, when and where the discharge occurred;

(b) A description of any damage known to the operator to have been caused by the discharge; and

(c) If the services of a person certified as an environmental manager pursuant to NAC 459.972 or 459.9724 have been obtained, the name of that person.

3. The operator shall take all reasonable steps to protect the site of the discharge from further damage ~~in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62.~~

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him in cleaning up the discharge.

(b) Permit the Division to inspect any property or records relating to the discharge or damage caused by the discharge.

(c) Notify the Division if the cost of:

(1) An emergency action; or

(2) The initial response actions and abatement measures prescribed by 40 C.F.R. §§ 280.61 and 280.62, will exceed \$5,000.

(d) If the operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729, inclusive, by subsection 1 of NAC 459.9718, obtain the services of a person who is certified as an environmental manager pursuant to NAC 459.972 or 459.9724.

(e) Obtain approval from the Division or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000 if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency pursuant to paragraph (c) of subsection 1 of NAC 590.710; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages.

Sec. 9. NAC 590.780 is hereby amended to read as follows:

590.780 1. An operator, vendor or contractor who seeks to be reimbursed by the Fund for costs or liability for damages resulting from a discharge must submit to the Division a verified claim for reimbursement in the form prescribed by the Board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within 12 months after the date on which the operator, vendor or contractor knew or should have known of the discharge and the final claim must be submitted within 12 months after the completion of the corrective action necessitated by the discharge. The Board will not accept a claim after either deadline unless the operator, vendor or contractor demonstrates good cause for the failure to comply with the deadline.

2. The operator shall provide any additional information required by the Board in order to determine his eligibility for payment from the Fund.

3. The Board may authorize payment from the Fund to:
 - (a) An operator;
 - (b) A vendor;
 - (c) A contractor; or
 - (d) Any combination of persons listed in paragraph (a), (b) or (c), jointly.
4. If money from the Fund is paid to an operator before the operator pays a vendor or contractor, or both, the operator shall:
 - (a) Pay the vendor or contractor, or both; and
 - (b) Not more than 30 days after receiving the money from the Fund, provide the Division with confirmation of payment to the vendor or contractor, or both, of the money paid by the Board.
5. If an operator fails to pay a vendor or contractor for costs approved and paid by the Board within 30 days, the operator shall reimburse the Board for the money paid by the Board.
6. If an operator is entitled to receive payment for his necessary expenses for the costs of cleaning up, the Board will authorize payment of the per diem allowance and travel expenses at the same rate provided for state officers and employees generally.
7. As used in this section, “claim” or “claim for reimbursement” means a request for reimbursement by the Fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the Fund.